

AS



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/635,823	08/09/2000	Marc Staveley	16747-017400US	5392

32658 7590 01/26/2005
HOGAN & HARTSON LLP
ONE TABOR CENTER, SUITE 1500
1200 SEVENTEEN ST.
DENVER, CO 80202

EXAMINER

GEREZGIHER, YEMANE M

ART UNIT	PAPER NUMBER
----------	--------------

2144

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant(s)

09/635,823

Applicant(s)

STAVELEY ET AL.

Examiner

Yemane M Gerezgiher

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period of Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-10,13,14 and 17-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4,6-10,13,14 and 17-23 is/are rejected.
7) ☒ Claim(s) 24 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Amendment received on 07/06/2004 has been entered. Claims 1-4, 6-10, 13, 14 and 17-24 are pending in this application.

Allowable Subject Matter

2. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Further, the Examiner recommends an amendment to Claims 9 and 18 to include the limitation of the objected Claim 24 (if rewritten in independent form including all of the limitations of the base claims (claims 9 and 18)) would result allowance of the claimed invention on its entirety.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 2144

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Burgess et al (U.S. Patent Number 5,758,071) hereinafter referred to as Burgess.

As per claims 1, Burgess disclosed a method and system for monitoring the configuration of a network device connected to the network. Where the first network device having a monitoring tool and tracking agents *data collector(s) module(s)* (col. 3, lines 47-55 and Fig. 1) obtaining the configuration/status (col. col. 4, lines 30-40) data, where the configuration data comprised information about the first network device of computer network and where monitoring tool and tracking agents of the first network device collected the configuration information and transmitted back to the monitoring tool running in the first device (col. 3, line 47 through col. 4, line 29 and col. 4, lines 45-53) and where the monitoring tool transmitted ("uploaded") the configuration information to a second computer connected to the network where the second computer is a primary site (*central site*) receiving the transmitted configuration data of the network device and loading the configuration data in to a database (ABSTRACT, col. 2, lines 39-45, Figs. 5 and 10 and col.9, lines 57-67). Although Burgess was silent regarding *splitting data file to chunks of data for transmitting from a node to another node in the network and transmitting the packets*

Art Unit: 2144

(small chunks of data) separately to the central site and recombining the packets to recreate the data at the central site was inherently disclosed, because parsing or splitting data in to size-limited packets, transmitting the packets and merging the packets at the destination site must be performed when transmitting a configuration or device status or other information from one network device to another network device. Burgess disclosed a step of accessing a database stored at the primary central location (claim 2). See col. 2, lines 36-50.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 3-4, 6-10, 13, 14 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al (U.S. Patent Number 5,758,071) in view of Putzolu et al (U.S. Patent Number 6,681,243)

Art Unit: 2144

As per claims 9 and 18, Burgess disclosed a method and system for monitoring the configuration of a network device connected to the network. Where the first network device having a monitoring tool and tracking agents *data collector(s)* *module(s)* (col. 3, lines 47-55 and Fig. 1) obtaining the configuration/status (col. col. 4, lines 30-40) data, where the configuration data comprised information about the first network device of computer network and where monitoring tool and tracking agents of the first network device collected the configuration information and transmitted back to the monitoring tool running in the first device (col. 3, line 47 through col. 4, line 29 and col. 4, lines 45-53) and where the monitoring tool transmitted ("uploaded") the configuration information to a second computer connected to the network where the second computer is a primary site (*central site*) receiving the transmitted configuration data of the network device and loading the configuration data in to a database (ABSTRACT, col. 2, lines 39-45, Figs. 5 and 10 and col.9, lines 57-67). Burgess disclosed a step of accessing a database stored at the primary central location (claims 14). See col. 2, lines 36-50. Burgess transmitted collected data from a monitored computer in the network to another remotely located central device in the network and since TCP/IP defines a variable packet or a data

Art Unit: 2144

chunk size, it is inherently disclosed that a configuration file must have been defined a size of the packets transmitted (claim 6). Burgess further disclosed remotely monitoring the execution of collectors/agents that run on the network devices to be monitored (claims 8 and 10) (Fig. 4). As per claim 13, Burgess disclosed a display/graphical interface at the network device for viewing data (col. 4, lines 54-66). Burgess disclosed remotely monitoring the execution of collectors/agents that run on the network devices to be monitored (claims 8 and 10) (Fig. 4).

With respect to the claim rejection applied above, Burgess substantially disclosed the invention as claimed. However, Burgess did not clearly teach *a monitoring application accessing a configuration file to determine which of the network devices to monitor, and which data collector modules to run on which ones of the target devices.*

An artisan working with Burgess's invention would have been motivated to look for teachings that may have allowed accessing a configuration file for determination of which probing modules to run on which connected network devices. In these arts Putzolu disclosed accessing a configuration file and determining the network device to be monitored and determining which data

Art Unit: 2144

collecting module to be run on the associated network device.

See Column 12, Line 49 through Column 13, Line 3.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Putzolu related to *accessing a configuration file to determine which of the data collector modules to run on which devices* and have modified the teachings of Burgess related monitoring network devices in order to "provide security, in that rogue objects (e.g., rogue agents) can not harm the device or network ... allowing for modules to access restricted resources, may allow for controlled access to resources". See Column 12, Lines 27-37.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the already combined teachings of Burgess et al (U.S. Patent Number 5,758,071) and Putzolu et al (U.S. Patent Number 6,681,243) as applied to claim 9 above and further in view of Kullick et al (U.S. Patent Number 5,732,275) hereinafter referred to as Kullick.

With respect to the claim rejection applied to claim 9 above, the combined teachings of Burgess and Putzolu substantially disclosed the invention as claimed. However, both did not teach *monitoring tool/application communicating with the*

Art Unit: 2144

central site to determine if newer releases of the monitoring tool or application or the data collectors exist, and if so downloading the newer releases from the central site.

An artisan who was aware of the combined teachings of Burgess and Putzolu, at the time the applicant's invention was made would have been motivated to look for teachings that may have allowed to automatically update a monitoring tool with a newer monitoring tool avoiding a human interaction with the system in order to update the monitoring software and to automatically update a monitoring tool with a newer monitoring tool avoiding a human interaction with the system in order to update the monitoring software. In these arts Kullick taught a software module determining whether a newer version of the application program was available at the central location and based on the determination if a newer application tool or software was detected the software module automatically downloaded updating the older version with a newer version of the software application. See ABSTRACT and patent claims 7 and 24.

Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to take the teachings of Kullick related to a method and apparatus for managing and automatically updating software program by

Art Unit: 2144

selecting available newer version of the same program stored in the central site and have modified the already combined teachings of Burgess and Putzolu related to monitoring network devices connected to the network, because such a modification would "permit a software program running on a computer to be automatically updated with a newer version in a completely automated fashion, without requiring external access to the computer, and in a manner that is completely transparent to the user of the computer. " See col. 2, lines 33-37.

8. Claims 3, 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al (U.S. Patent Number 5,758,071) as applied to claims 1 and 2 above and in view of Kullick et al (U.S. Patent Number 5,732,275) hereinafter referred to as Kullick.

With respect to the claim rejection applied above, Burgess substantially disclosed the invention as claimed. However, Burgess did not expressly teach *using a browser to send request for information to the central site, and at the central site to use a command query to retrieve information from a database and sending the retrieved information back to the web browser through the internet and monitoring tool/application communicating with the central site to determine is newer*

Art Unit: 2144

releases of the monitoring tool or application or the data collectors exist, and if so downloading the newer releases from the central site.

Examiner takes Official Notice (see MPEP § 2144.03) that " using a browser to send request for information to the central site, and at the central site to use a command inquiry to retrieve information from a database and sending the retrieved information back to the web browser formatted in a report form through the internet " in a computer networking environment and mainly in a client server environment where a client using a web browser sends a request to a remote server to retrieve desired information and where a command inquiry is generated and query is performed at the remote server to retrieve information from a database associated with the server and sending the retrieved information to the requesting client at a client network via the Internet was very well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03. However, MPEP § 2144.03 further states, "See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)."

Art Unit: 2144

Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Ahlert, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

An artisan working with Burgess system at the time the applicant's invention was made would have been motivated to look for teachings that may have allowed to automatically update a monitoring tool with a newer monitoring tool avoiding a human interaction with the system in order to update the monitoring software and to automatically update a monitoring tool with a newer monitoring tool avoiding a human interaction with the system in order to update the monitoring software. In these arts Kullick taught a software module determining whether a newer version of the application program was available at the central location and based on the determination if a newer application tool or software was detected the software module automatically downloaded updating the older version with a newer

Art Unit: 2144

version of the software application. See ABSTRACT and patent claims 7 and 24.

Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to take the commonly known teachings (using a web browser to send request to a site and retrieve information from a database in the site and send the retrieved data back to the user interface or web browser formatted in a report form) and further to take the teachings of Kullick related to a method and apparatus for managing and automatically updating software program by selecting available newer version of the same program stored in the central site and have modified Burgess related to monitoring network devices connected to the network, because such a modification would "permit a software program running on a computer to be automatically updated with a newer version in a completely automated fashion, without requiring external access to the computer, and in a manner that is completely transparent to the user of the computer. " See col. 2, lines 33-37.

9. Claims 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlener et al (U.S. Patent Number 6,182,157) in view of Putzolu et al (U.S. Patent Number 6,681,243) hereinafter referred to as Putzolu and further in view of

Art Unit: 2144

Rangaraian et al (U.S. Patent Number 5,828,830) hereinafter referred to as Rangaraian.

As per claim 18, Schlener disclosed *starting a data collection tool, retrieving a configuration file with the data collection tool and running one or more data collectors on the network devices* (See Management Station executing a management tool in Figure 1), *were the data collectors were collecting different sets of information* (See Figure one where an agent collecting configuration information related to a PC workstation, another agent running on a server collecting different set of configuration information and yet another agent collecting configuration status associated with a router) *for corresponding network device which have been monitored and transmitting the collected information from the 3 monitored network devices to the monitoring station.* See Figure 1, Column 1, Lines 8-55; Column 2, Line 49 through Column 3, Line 65.

Schlener substantially disclosed the invention as claimed, but failed to teach *identifying a set of the network devices to be monitored using the configuration file comprising a listing of the data collectors to be run on the identified devices and obtaining a list of remote hosts names from a name server and*

Art Unit: 2144

filtering the list of remote hosts name by applying a filter rules.

An artisan working with Schemer's invention would have been motivated to look for teachings that may have allowed accessing a configuration file for determination of which probing modules to run on which connected network devices and *obtaining a list of remote hosts names from a name server and filtering the list of remote hosts name by applying a filter rules*. In these arts Putzolu disclosed accessing a configuration file and determining the network device to be monitored and determining which data collecting module to be run on the associated network device (see Column 12, Line 49 through Column 13, Line 3), but did not clearly teach *obtaining a list of remote hosts names from a name server and filtering the list of remote hosts name by applying a filter rules*. However, Rangaraian disclosed a configuration file having a list of host names obtained from a DNS and applying a filter rule. See Figure 5, Column 7, Lines 24-34 and Column 6, Lines 54-67.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Putzolu related to *accessing a configuration file to determine which of the data collector modules to run on which*

Art Unit: 2144

devices and Rangaraian related to obtaining host names from a name server by applying a filter mechanism and have modified the teachings of Schlener related monitoring network devices, because Rangaraian's teaching would be used to reduce the number of agents that are processed while monitoring targeted devices and in order to "provide security, in that rogue objects (e.g., rogue agents) can not harm the device or network ... allowing for modules to access restricted resources, may allow for controlled access to resources". See Putzolu Column 12, Lines 27-37.

Response to Arguments

10. Applicant's arguments filed 07/06/2004 have been fully considered but they are not persuasive.

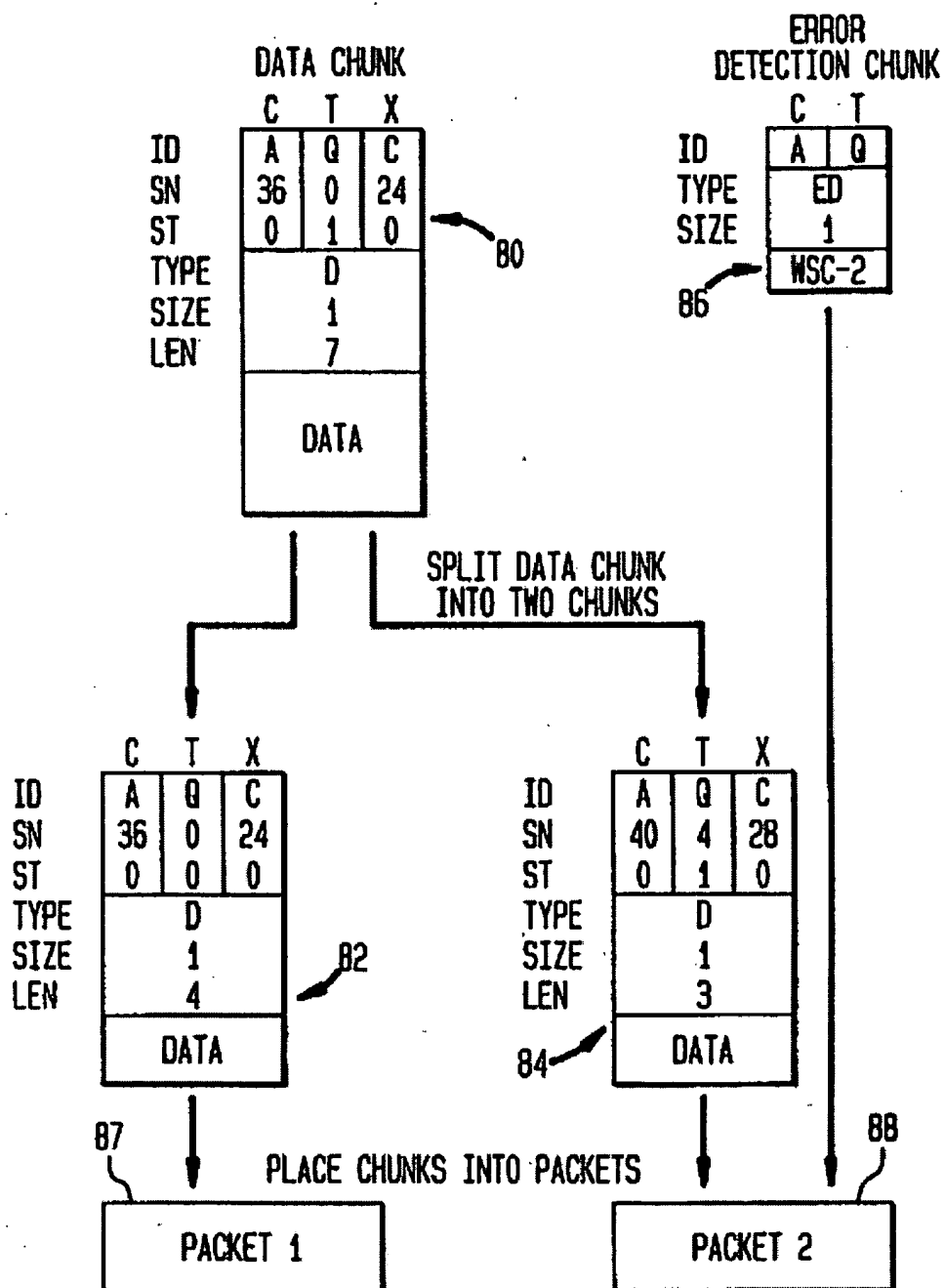
a. The inventive entity recite, "Hence, as amended, Claim 1 requires that not only is the transferred data subject to standard packetization according to a network transfer protocol but also the monitoring tool ads to first subdivide the gathered data into data chunks. The Office Action argues that packetization is standard for transfer of digital data over communication links, and applicants agree that standard packetization is not novel. However, Burgess fails to show a monitoring tool that processes gathered data into smaller files prior to sending the files

Art Unit: 2144

(via standard protocols)." Applicant's Remark Page 7 Line 24 through Page 8 Line 3.

The amendment made in accordance to claim 1 does not change the scope of the invention as claimed, because as applied in the examiner's response in the last action, Splitting data into data chunks prior to the packetization was inherently disclosed by the teachings of Burgess. See Examiner's response in the last action. Burgess disclosed a monitoring tool transmitting configuration information to a second computer connected to the network where the second computer is a primary site (*central site*) receiving the transmitted configuration data of the network device and loading the configuration data in to a database (ABSTRACT, col. 2, lines 39-45, Figs. 5 and 10 and col.9, lines 57-67). For Example Feldmeier et al. (U.S. Patent Number 5,583,859) disclosed the inherent teachings of Burgess or method of transmitting information objects using IP explicitly. As it is normally implemented In TCP/IP, Splitting data files into data chunks and subdividing the data chunk in to even smaller data chunks and later packetizing the small chunks of data were disclosed by Feldmeier. See ABSTRACT, Column 6, Lines 55-67 and Figure 7 (also disclosed below):

FIG. 7



b. The inventive entity also argues that Putzolu failed to teach a monitoring tool accessing a configuration file

Art Unit: 2144

to determine which network/target devices to monitor, and accessing a configuration file to determine which data collectors to run or on which target devices. See Applicant's Remark Page 9 Paragraphs 2-4, Page 10 2nd paragraph, Page 11 1st Paragraph, Page 12 5th Paragraph and Page 13 2nd Paragraph.

However, monitoring target devices using SNMP and accessing an access control list to determine which data collectors to run on which target devices was disclosed by the teachings of Putzolu. See Figure 4, Column 12 Line 49 through Column 13 Line 3. Applicant's argument that there is no a monitoring tool accessing the configuration file in the teachings of Putzolu is not persuasive, because the base of the rejection is not relied solely on the teachings of Putzolu, but based on the combined teachings disclosed.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

Art Unit: 2144

is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Yemane Gerezgiher whose telephone number is (571) 272-3927. The examiner can normally be reached on Monday- Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, William Cuchlinski, can be reached at (571) 272-3925.

Yemane M. Gerezgiher
AU: 2144

MARC D. THOMPSON
MARC THOMPSON
PRIMARY EXAMINER